IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1433 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
NOGHA KALA BHARWAD & 11

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Appearance :
MR KC SHAH APP for Appellant
None for Respondents 1 - 12.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 16/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1. This criminal appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by learned Special Judge, 2nd Fast Track Court, District : Junagadh at Veraval on 28th January, 2005 in Atrocity Sessions Case No.9/2002 whereby all the present respondents being accused of the said Atrocity Sessions Case came to be acquitted by the trial Court for the offences punishable under Sections 143, 147, 148, 149, 504, 506(2), 436 of the Indian Penal Code, for the offence punishable under Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities)

Act, 1989 as well as for the offence punishable under Section 135(1) of the Bombay Police Act.

2. According to the prosecution case, the incident in question occurred on 27th July, 2000. The complainant – Bhimabhai Samatbhai Sarvaiya, resident of village : Sonariya, Taluka : Girgadhada along with his mother Valiben and two sisters had been to their field at about 9.00 a.m. When they reached their field, they noticed that standing crop was spoiled by cattle grazing. Adjoining field belonged to the uncle of complainant Pachabhai Ranabhai and they noticed that accused Bogha Dungar, Naja Dungar, Ghela Dungar and Jodha Dungar all of Bharwad community along with other Bharwads' cattle were grazing their cattle in the field of Pachabhai Rananbhai. The complainant asked whether they had spoiled the crop standing on their field. In reply, the accused Bogha Dungar and Jodha Dungar threatened the

complainant and his relatives that they had spoiled the standing crop in the field of the complainant and complainant was free to go wherever he wanted to go and accused, thereafter, started abusing to the complainant and his relatives. On requesting by the complainant not to speak abuses, complainant was insulted by the accused by his caste and further threatened that had not they (complainant and his relatives) left the village, their residential houses would be burnt. Therefore, the complainant, his mother and sisters came to their houses and conveyed this incident to the father of the complainant. On account of fear of the accused, the whole family stayed in their houses and were awakened till late night. At about 3.00 a.m. on 28th July, 2000, they noticed a fire and smoke and when all of them came out, they found that five persons with sticks in their hands were putting fire to their houses. When they were accosted, one

blow on the door of the house was given by one of the accused by an ax and amongst the accused, accused Bodha Dungar and Jodha Dungar again threatened the complainant and his family members to kill. Complainant and his family members started shouting for help and people gathered there, so the accused ran away from the spot. The complaint was offered before Police Sub-Inspector, Girgadhada at 12.30 p.m. On crime being registered, the investigation was entrusted to Deputy Superintendent of Police, Veraval and, thereafter, Pratapbhai Poojabhai Asari, Deputy Police Superintendent incharge of Atrocity Cell, appears to have submitted the charge-sheet.

3. Learned trial Judge framed the charges for the above said offences against in all 12 accused vide Ex.3 on 19th July, 2004. All the accused pleased not guilty. In all there were 14 accused charge-sheeted, but accused No.3 – Naja Dungar and accused No.11 – Ghela Kana

appear to have expired after filing the charge-sheet.

4. The trial Court examined as many as 8 witnesses and submitted documentary evidence on record to prove the case. The trial Court also recorded the statements of each of the accused under Section 313 of the Code of Criminal Procedure, but each accused stated that a false case was filed against them.

5. After hearing the prosecution and the defence, learned trial Judge came to the above conclusion to acquit all the accused from all the charges levelled against them and hence, this appeal.

6. Learned APP Mr.K.C.Shah at this stage of admission vehemently urged that though the witnesses have not supported the prosecution case and that as has been disclosed in the evidence a compromise took place between the parties, and on that account witnesses might have turned hostile, but the fact remains that the F.S.L. Report indicates presence of

kerosene at the scene of offence and panchnama of scene of offence also establishes the damage done to the house of the complainant by fire. Learned APP Mr.K.C.Shah stated that the case requires consideration.

7. At this stage, we have undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. We are equipped with the Record & Proceedings of the trial Court and learned APP assisted us by providing extra copies of the evidence recorded and the documents produced. We have even at this juncture carefully gone through each corner of this case.

8. Going through the evidence of witnesses, it is found that the complainant examined as **P.W.1** – Bhimabhai Samatbhai Sarvaiya at Ex.27, **P.W.2** – Samatbhai Ranabhai Sarvaiya examined at Ex.29, **P.W.3** – Pachabhai ranabhai

Sarvaiya examined at Ex.31, **P.W.4** – Valiben w/o. Samat Rana Harijan examined at Ex.32, **P.W.5** – Somatbhai Hirabhai Sarvaiya examined at Ex.47, **P.W.6 –** Vijuben Hirabhai Sarvaiya examined at Ex.48, all these six witnesses have not supported the prosecution case. The complainant – Bhimabhai and P.W.6 – Vijuben Hirabhai Sarvaiya both are eye witnesses of the first incident occurred in the morning and all the six witnesses are eye witnesses of the incident occurred at the night in which the accused allegedly put fire to their houses, stated in their evidence that though the crops standing in their field was spoiled by cattle grazing, but they did not know who ruined their crops. Likewise, each of these six witnesses stated before the trial Court that though their houses were put to fire, but they could not recognize and identify any of the persons, who put fire to their houses. Each of these six witnesses was declared hostile and was confronted with their

individual version before the police, but nothing is coming out from the cross-examination of the prosecution to link any of the accused with the crime. Thus, from re-appreciation of the evidence, we find that none of the witnesses could establish link between the accused and the alleged crime. True it is that some of the witnesses admitted that a compromise was executed between the parties in respect of the incident, but they refused the allegations that on account of compromise each witness had turned hostile. While some of the witnesses refused the fact that any compromise had taken place between the parties.

9. The prosecution examined P.W.7 – Mepabhai Premjibhai Chauhan at Ex.51, Girgadhada PSI, who recorded the complaint of the complainant and P.W.8 – Pratapbhai Poojabhai Aasari, examined at Ex.52 the then Deputy Police Superintendent incharge of Atrocity Cell, who

investigated the offence. Both these witnesses are formal and P.W.6 – Vijuben stated the fact about recording of the complaint and P.W.8 stated the fact about the investigation.

10. It must be noted here that the order impugned in the appeal is an order against the acquittal. Though this Court has power to reconsider the whole issue and re-apprise the evidence and come to its own conclusion, but unless the findings recorded by the trial Court are perverse, against the weightage of the evidence and demonstrably unsustainable, it is not permitted that such order of acquittal can be interfered with even if another view which can reasonably be taken from the evidence recorded by the trial Court.

11. Learned trial Judge, acquitted the accused because firstly none of the witnesses supported the prosecution case, except two police witnesses and secondly, no certificate

of the caste of the complainant and his relatives could be produced on record.

12. While we appreciated the evidence on record and scrutinized the reasons recorded by the trial Court for acquittal, without any hesitation, we also find that this is a case wherein even no second view is reasonably possible then the view taken by the trial Court. The findings arrived at by the trial Court are proper and according to weightage of the evidence recorded during the trial. We, therefore, come to the conclusion that even at this stage, no interference is required in the judgment and order impugned in this appeal.

13. In view of the above, leave to appeal is refused. This criminal appeal is dismissed.

[J. R. VORA,J.]

[SMT. ABHILASHA KUMARI,J.]

(vijay)